IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3304 OF 1990
WITH
CIVIL APPLICATION NO. 8713 OF 1999

Shri Ramchandra Sitaram Raje
Age 60 years, Occ. Nil
R/o. 11, Chaturshringi Road,
Pune - 16. ..Petitioner

Vs.

Smt. Rampyaribai Shivlal Sharma
Age 30 years, Occ. Business
R/o Chaturshringi Road,
Pune - 16. ..Respondent

Mr. R.S. Kate for petitioner.
Mr. S.M. Gorwadkar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 07, 2007.

ORAL JUDGMENT:

1. This petition filed under Article 227 of the Constitution arises from the decree of eviction passed by the learned 4th Additional Small Causes Judge, Pune in Civil Suit No. 1689 of 1984 on 14/9/1987 and confirmed by the learned 4th Additional District Judge, Pune in Civil Appeal No. 1013 of 1987 as per the Judgment and Order dated 20/6/1990.

2. The suit premises is one room admeasuring 12 x 18 ft. (three Khans) and part of property bearing No.2801 and House No.11, Chaturshringi Road, Pune - 16. It was under the possession of the present petitioner for number of years and the original owner sold the same room to the plaintiff sometimes in 1980. The defendant, therefore, started paying the rent of Rs.12/- per month with 2% other taxes to the plaintiff. The tenancy commenced from first day of the calendar month and ended on the last day. The plaintiff filed Civil Suit No. 1689 of 1984 seeking the vacant and peaceful possession of the suit room on various grounds, namely, default in payment of rent, reasonable and bonafide requirement for self use, carrying out permanent construction without permission on the suit premises and conduct of the defendant which amounted to nuisance and annoyance to the plaintiff's family members. On behalf of the plaintiff, her husband had stepped in the witness box whereas the defendant examined himself for opposing the suit. The defendant had opposed suit mainly on the ground that he was not a defaulter, the plaintiff had sufficient alternate accommodation for her family

and, therefore, she did not require the suit premises and on the other hand the defendant would be put to more hardship if the decree of eviction was passed. It was further claimed that the defendant was not guilty of any conduct which would amount to nuisance and annoyance to the plaintiff's family members.

3. Notice was issued to the defendant on 28/1/1984 demanding arrears of rent from 5/12/1982 (Exh.20) and the postal receipt was brought on record at Exh.21. The defendant claimed that so far as the payment of rent is concerned, he had paid the same upto 4/12/1982 and thereafter whenever he offered the payment of rent, the same was refused to be accepted by the plaintiff. The defendant, thus, denied that he was in default of rental compensation. The trial court has discarded the ground of default and held that the plaintiff proved her requirement to take possession of the suit room for the reasonable and bonafide use of her family members and if the decree was not passed in her favour she would suffer greater hardship than the defendant. The trial court also recorded a finding against the defendant that he has

unauthorisedly put up permanent structure on the suit premises. On all these grounds, the defendant was directed to deliver vacant and peaceful possession of the suit premises to the plaintiff on or before 30/11/1987. The defendant had challenged this decree in Civil Appeal No. 1013 of 1987 and, as noted earlier, the said appeal came to be dismissed.

4. Thus, only two issues are required to be considered, namely,

(a) whether the plaintiff had proved her reasonable and bonafide requirement of the suit premises? and

(b) whether she would suffer greater hardship if the decree granting possession of the suit premises was not passed?

. The admitted evidence goes to show that the plaintiff with 10 other family members was in occupation of two rooms numbered as House No.14 and

House No.15. House No.14 admeasured 10x15 ft. and 1/2 portion of it was being used for the business of grocery shop and remaining 1/2 portion was for the residence of the family. Whereas House No.15 admeasuring 9 x 10 ft. was being used as a godown. The defendant had also claimed that the plaintiff had one more room at Jawaharnagar but in the cross-examination he admitted that it was belonging to the plaintiff's family friend. The plaintiff's husband, who appeared in the witness box, stated that the room in Jawaharnagar was being used by the members of the family but only for sleeping in the night and it was a temporary arrangement provided by the family friend. The evidence further indicated that plaintiff, her husband, two brothers of her husband, wife of one brother of the husband and six children in the family were staying together. The plaintiff's three children were school going in as much as they were studying in 11th and 12th standard. it was under these circumstances, the trial court held in favour of the plaintiff regarding the reasonable and bonafide requirement of the suit premises.

5. As far as the defendant is concerned, he admitted in his depositions that he was a widower with three sons. All of them employed in three different establishments. His son Prakash was residing at Pashan and other son Balu was employed in Sandvik Asis Ltd. Company and was residing at Akurdi in his own flat. The youngest son Narendra was working at Aurangabad during the pendency of the suit and his wife is employed at KEM Hospital at Pune. Thus, the defendant was staying in the suit room with his daughter-in-law and he had retired from service as a driver. During the pendency of the appeal before the Lower Appellate Court, the defendant's son Narendra got a job at Pune. Even then, three of them continued to occupy the suit room. On the other hand, the plaintiff was in tenanted premises with 11 family members and as big as the suit room or may be smaller. Before the Lower Appellate Court the defendant sought to bring on record some additional evidence in support of his contentions that the plaintiff had acquired additional premises in Sangavi area under the Pimpri Chinchwad Municipal Corporation. The Lower Appellate Court considered this additional evidence and discarded the same as a ground to defeat the decree of

eviction. As per the Lower Appellate Court it could be possible that the two brothers of the plaintiff's husband had re-established themselves and it could not be conclusively held that the entire family had sufficient accommodation and, therefore, the need of the suit room did not exist.

6. In this petition as well by filing Civil Application No. 8713 of 1999 the petitioner claimed for setting aside the decree of eviction on the basis of additional documents showing the land owner having acquired additional premises. During the last about 23 years or so the landlady's family has grown and her husband's brothers have perhaps shifted to the alternative accommodation as has been noted by the Lower Appellate Court and these additional premises do not indicate that the landlady along with her family has occupied a residential tenement constructed thereon. The electricity bills go to show that some flour mill is being run and the additional evidence so brought on record does not assist the case of the petitioner to defeat or nullify the decree of eviction passed by the trial court and confirmed by the Lower

Appellate Court.

7. Hence the petition fails and the same is hereby dismissed. Rule discharged. Interim order stands vacated. No costs.

8. Civil Application No. 8713 of 1999 does not survive and the same stands disposed off.

(B.H. Marlapalle,J.)